IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

OP.No. 12906 of 2001(J)

PETITIONERS:
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1. **P.K. VIJAYAN NAIR,**
   H.C.H 1032,
   POLICE TELECOMMUNICATION SUB UNIT, KOTTAYAM.

2. **P.P.JOHN,**
   HC H 1034, POLICE TELECOMMUNICATION SUB UNIT,
   KOTTAYAM.

3. **PRASAD CHACKO,**
   HC H 1036, POLICE TELECOMMUNICATION SUB UNIT,
   KOTTAYAM.

4. **ULAHANNAN C.M.,**
   HC H 1039, POLICE TELECOMMUNICATION SUB UNIT,
   PALAKKADU, NOW ON WORKING ARRANGEMENT POSTED
   TO TELECOMMUNICATION UNIT, IDUKKI.

5. **R.GOPAKUMAR,**
   HC H 1038, POLICE TELECOMMUNICATION SUB UNIT,
   KOTTAYAM.

BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.V.VARGHESE

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS CHIEF**
   SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM.

2. **DIRECTOR GENERAL OF POLICE,**
   POLICE HEADQUARTERS, THIRUVANANTHAPURAM.

..2/-

3. SUPERINTENDENT OF POLICE,
TELECOMMUNICATION, PATTOM,
THIRUVANANTHAPURAM.

4. K.P.SOMASUNDARAM,
HC H 1116, POLICE TELECOMMUNICATION UNIT,
PATHANAMTHITTA.

5. KABEERKUTTY H.,
HC H 1155, POLICE TELECOMMUNICATION UNIT,
KOLLAM.

BY ADV. SMT.K.T.LILLY @ MRS.LILLY JAMES for R4 & R5
SMT.A.ANUSREE
BY GOVERNMENT PLEADER SMT. T.B. RAMANI for R2 & R3

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 17/09/2007 ALONG WITH OP NO. 29475 OF 2002 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.20434/2001 IN O.P.NO.12906/2001 J

DISMISSED

17/09/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE LIST OF CANDIDATES SELECTED FOR APPOINTMENT AS PC (TELECOM) SUBJECT TO MEDICAL FITNESS AND SATISFACTION OF RELEVANT RULES AND REGULATIONS FOR THE YEAR 1986.**

EXT.P2: **COPY OF THE RELEVANT EXTRACT OF THE ORDER NO.A1/ 13399/93/TELECOM (SERVICE ORDER NO.254/94/TELECOM) DTD. 18/11/94 OF THE 3RD RESPONDENT.**

EXT.P3: **COPY OF THE RELEVANT EXTRACT OF THE ORDER NO.A1-13399/93/TELE.(SO NO.12/96/TELE.) DTD. 24/01/96 OF THE 3RD RESPONDENT.**

EXT.P4: **COPY OF THE RELEVANT EXTRACT OF THE ORDER NO.A1-7329/2000/ TELECOM (SO.NO.44/2000/TELECOM) DTD. 19/04/2000 WITH THE APPENDED PROVISIONAL SENIORITY LIST OF POLICE CONSTABLES (TELECOMMUNICATION) FOR THE PERIOD FROM 15/02/94 TO 15/04/2000 OF THE 3RD RESPONDENT.**

EXT.P5: **COPY OF THE OBJECTION SUBMITTED BY THE 1ST PETITIONER DATED 3/05/2000.**

EXT.P6: **COPY OF THE RELEVANT EXTRACT OF THE ORDER NO.A1-7329/99/ TELECOM (SO.NO.59/2000/TELECOM) DTD. 30/05/2000 OF THE 3RD RESPONDENT.**

EXT.P7; **COPY OF THE RELEVANT EXTRACT OF THE ORDER NO.A1-7329/99/ TELECOM) (SO.NO.59/2000/TELECOM) DTD. 1/12/2000 OF THE 3RD RESPONDENT.**

EXT.P8; **COPY OF THE RELEVANT EXTRACT OF THE ORDER NO.A1-99/2001/ TELECOM (SO.NO.21/2001/TELECOM DTD. 8/2/2001 OF THE 3RD RESPONDENT.**

EXT.P9: **COPY OF THE ORDER NO.A1-13399/93/TELE. DTD. 27/01/1994 OF THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION IN RESPECT OF SL.NO.34.**

..2/-

O.P.NO.12906/2001 J

EXT.P10: COPY OF THE ORDER NO.A1-13399/93/TELE.DTD. 27/01//1994 OF THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION IN RESPECT OF SL.NO.35.

EXT.P11: COPY OF THE ORDER NO.A1-13399/93/TELE.DTD. 27/01//1994 OF THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION IN RESPECT OF SL.NO.36.

EXT.P12: COPY OF THE ORDER NO.A1-13399/93/TELE.DTD. 27/01//1994 OF THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION IN RESPECT OF SL.NO.37.

EXT.P13: COPY OF THE ORDER NO.A1-13399/93/TELE.DTD. 27/01//1994 OF THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION IN RESPECT OF SL.NO.38.

EXT.P14: COPY OF THE ORDER NO.A1-13399/93/TELE.DTD. 27/01//1994 OF THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION IN RESPECT OF SL.NO.41.

EXT.P15: COPY OF THE ORDER NO.A1-13399/93/TELE.DTD. 27/01//1994 OF THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION IN RESPECT OF SL.NO.42.

EXT.P16; COPY OF THE ORDER NO.A1-13399/93/TELE.DTD. 27/01//1994 OF THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION IN RESPECT OF SL.NO.56.

EXT.P17: COPY OF THE REPRESENTATION DTD. 3/02/1997 TO THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION.

EXT.P18; COPY OF THE ORDER SO.NO.63/97/TELECOM DTD. 3/04/1997 OF THE SUPERINTENDENT OF POLICE, TELE COMMUNICATION.

/TRUE COPY/

P.A.TO JUDGE

KSS

/TRUE COPY/

P.A.TO JUDGE

KSS

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.Nos.12906 OF 2001,
29475 OF 2002, 207 & 7122 OF 2003,
W.P(C).Nos.29211 OF 2003 & 32944 OF 2004

Dated this the 17th day of September, 2007

JUDGMENT

"C.R."

Can a seniority list of Government servants be prepared only on the basis of the age of the personnel ? Can any principle of reservation be applied in public employment, without any enabling provision ? These are the issues arising for decision in these cases.

2. Petitioners and the private respondents are Police Constables (Telecommunication) governed by the Special Rules issued by the Government of Kerala as per S.R.O.No.848/83. With the passage of time, they have been promoted to various posts. The issue is as to whether the publication of seniority list of Police Constables (Telecommunication) is sustainable under the law and the Constitution.

3. The allegation of the petitioners is that the impugned seniority list has been prepared solely on the criteria of age of the incumbents and by applying a rule of reservation and communal rotation, which is just not available in the Special Rules. It is also the specific and uncontroverted contention of the petitioners that the Government have not issued any notification in terms of the second limb of Rule 14 of part II of the Kerala State and Subordinate Services Rules, 1958, hereinafter, the 'General Rules', for short.

4. Dealing first with the plea relating to the application of principles of reservation, it can be noticed that there is no provision in the Special Rules, by which, any principle of reservation of appointments is laid down to apply to the service class or category to be regulated by those Special Rules. Therefore, the opening limb of Rule 14 of the General Rules does not apply. As already noticed, it is not in dispute that the Government have not made and issued any notification in the gazette, declaring that the principle of reservation of appointments shall apply to such services. Bereft of any of these

two, the applicability of the rules of reservation contained in the General Rules is excluded. Reservation in public appointments is not a constitutional mandate, it is a matter of constitutional permittance. It is that permissiveness that becomes the foundation for making a rule of reservation within the permissible limits. But, in cases where reservation is not made, it cannot be enforced because any enforcement of a principle, which is not made applicable, would immediately infract Article 14 and would, in public service, impinge on Article 16 of the Constitution. Therefore, the impugned seniority list, in so far as it applies a rule of reservation and communal rotation, is contrary to law and the Constitution, and is, therefore, void and inoperative.

5. In so far as the preparation of the impugned seniority list solely on the basis of the age of the incumbents is concerned, the laws do not authorise it. That is not a yardstick found in the General Rules. Such a yardstick is irrational. It is arbitrary. Hence, unconstitutional.

6. It is the admitted fact that the Police Department does not have the files relating to the Police Constables (Telecommunication), at least for the relevant period. In the absence of availability of relevant records, the next rational course that ought to be reasonably adopted is to reconstruct the files to the extent it is possible and permissible. Reconstruction of documents has to be done on the basis of whatever relevant documents that may be available, including those which the concerned personnel may provide, the reliability of which would be decided by the superiors in the department, guided by justice, equity and conscience, resulting in a rational and reasonable conclusion on the acceptability of such documents. Thereupon, preparation of the file by reconstruction on the basis of such reliable materials would follow. Such a course of action in relation to the file in question and the consequent preparation of seniority list cannot be substituted by preparing a seniority list by following the age of the government servants. Along with the reply affidavit in O.P.No.12906/01, materials are placed by the writ petitioners, to which, reference is being made only to point

out that such materials may be available as could satisfy the wisdom and conscience of the superior departmental officials.

7. Learned counsel for the contesting private respondents, relying on the judgment of this Court in **Manager, M.P.V.H.S. school** v. **Girija** [2003 (1) KLT 935 (F.B.)], argued that the petitioners may not be permitted to challenge the seniority list at this distant point of time, merely on the question of a principle, particularly when files are not available with the Department. The judgment cited does not directly apply to the facts of the case in hand. However, the content of the argument advanced by the learned counsel appears to be that the petitioners are liable to be defeated on the principle of sit back and that it would be too late in the day to upset a seniority list. The impugned seniority list is dated 1.12.2000. The earliest among these writ petitions is filed in April, 2001. Paper publication of the notice of that writ petition was ordered and carried out. The practice and procedure in relation to writ petitions relating to seniority lists is, apparently, that no interlocutory orders are normally issued except in exceptional circumstances of glaring

illegality. As a corollary, all consequences of the findings in this judgment shall follow. The objection of the private respondents are, therefore, overruled.

8. The impugned seniority list made only on the basis of age of the incumbents and following a rule of reservation and communal rotation, which is not applicable to the posts, going by the relevant Special Rules, cannot stand the test of the laws and the Constitution. It is, therefore, void and liable to be declared so.

In the result, these writ petitions are allowed in the following manner:

(i) The impugned seniority list of police constables (Telecommunication) dated 1.12.2000, published as per S.O. No.145/2000/TELECOMM is set aside.

(ii) It is directed that the official respondents will ensure the immediate preparation of a seniority list, after giving

opportunity to the personnel to place all available documents to evidence their date of entry or such other matters, as may be relevant. A notice calling for such documents shall be issued fixing a cut off date for production of such materials. Individuals who seek to be personally heard shall be extended such opportunity.

(iii) The seniority list shall be prepared without applying any rule of reservation or communal rotation, so long as S.R.O.848/83 stands as it is.

(iv) Age shall not be treated as the criterion for fixing the seniority.

(v) All promotions and placements made on the basis of the impugned seniority list shall stand regulated by this judgment and shall be modified in terms of the seniority list that shall be prepared as directed above.

(vi) The final seniority list as directed above shall be prepared and published within an outer limit of six months from the date of receipt of a copy of this judgment.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.Nos.12906 OF 2001,
29475 OF 2002, 207 &
7122 OF 2003,
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JUDGMENT

17th SEPTEMBER, 2007.

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